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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 000107

SIPDIS

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TAGS: [PGOV](#) [PINS](#) [PHUM](#) [MARR](#) [TU](#)
SUBJECT: CIVILIAN COURT JURISDICTION OVER THE MILITARY
OVERTURNED

REF: ANKARA 66

Classified By: Acting POL Counselor Jeremiah Howard, for reasons 1.4(b,
d)

¶1. (C) SUMMARY: Acting on a petition filed by the staunchly secularist opposition Republican People's Party (CHP), Turkey's Constitutional Court January 21 overturned the June 26, 2009 law that sought to establish civilian courts' jurisdiction over military personnel accused of crimes against state security, national defense or the constitutional order. The court's decision left in place the provision of the law that prohibits civilians from being tried in military courts, which had not been a subject of the CHP petition. Although details of the court's decision remain unclear, it may impact ongoing civilian legal efforts to hold military members accountable for their alleged past inclination to subvert the ruling Islamist Justice and Development Party (AKP) government. Ahmet Iyimaya (PROTECT), an AKP MP and Chairman of the Constitutional Reform Committee, told us privately he believes the Constitutional Court had been under extreme pressure from the military to make the ruling. He implied military officers want to protect themselves because of emerging media reports about an aborted coup plot code-named "Sledgehammer". Even so, the Turkish General Staff (TGS) opposed the law since its inception, long before the most recent coup plot reports. The long-running and increasingly muddy rugby match between the military and their secularist allies, and the Islamist civilian government, is straining the court system and other national institutions, distracting the attention of the country's political and military leadership and contributing to the unease and polarization of the Turkish population.
END SUMMARY.

¶2. (U) The Constitutional Court January 21 overturned the June 26, 2009 law that sought to establish civilian courts' jurisdiction over military personnel accused of crimes against state security, national defense or the constitutional order. The unanimous decision resulted from a challenge to the law by the staunchly secularist opposition CHP, which argued the law violated Article 145 of the Turkish Constitution. (Note: Article 145 establishes military court jurisdiction over military personnel regarding offenses connected to execution of their military duties.)

¶3. (SBU) The ruling comes amidst increasingly emotional media reports about an aborted coup plot codenamed "Sledgehammer," which allegedly would have sought to establish a pretext for martial law by fomenting war with Greece and terrorizing the Turkish population through bombings of public venues, notably mosques. The reports connect Sledgehammer to the developing Ergenekon case. The reports have been vehemently rejected by the TGS as fabrications. Nevertheless, the repeated allegations of senior flag officers' inclination to subvert the Islamist AKP government are eroding popular respect for the military. Recently, a group of lawyers and human rights activists staged a protest to oppose "military coups". On January 21, another activist group filed a criminal complaint against the military for an alleged attempted coup against the government.

¶4. (C) Rear Admiral Yildirim, the Deputy Chief of Intelligence of the Turkish General Staff, told us January 21 (before the verdict was released), that he expected the law to be overturned by the court on legal grounds. Like most senior military officers and many of the secularist opponents of Erdogan's AK Party, Yildirim argued the law was an inappropriate and unconstitutional attack on one of the military's prerogatives. In a media briefing on January 22, TGS Legal Counselor General Hifzi Cubukcu said, based on the decision, the military personnel files currently at civilian courts would be returned to military courts. Sadi Cayci, a retired military judge, told us that, from a legal perspective, the court had no choice but to overturn the law as it clearly contravened the constitution. He expects the

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AKP to push for a constitutional amendment to circumvent the court's decision.

¶5. (C) AKP MP and Chairman of the parliament's Constitutional Reform Committee Ahmet Iyimaya (PROTECT), a close confidante of both Prime Minister Erdogan and President Gul, appeared uncharacteristically shaken by the court's decision during a private meeting with us January 22. While repeatedly insisting that our meeting be "off the record," Iyimaya stressed his belief that the court had acted "under the barrel of a gun." Iyimaya contends senior TGS officers pressured the court to invalidate the law because of the rising popular distrust of the military and the Sledgehammer coup allegations. He found the court's unanimity particularly suspect, claiming several justices disagreed with the decision. He said the dissenters had been intimidated because their names would be known to the military and their lives could be in danger. (Comment: The TGS staunchly opposed the law since its inception, long before the sensationalist Sledgehammer allegations surfaced.)

¶6. (C) Iyimaya said ongoing civilian court cases against military defendants, such as Ergenekon, would continue since they were opened before the law was changed. He worries the cases will be overturned on appeal based on the Constitutional Court's decision.

¶7. (C) Iyimaya said the only way forward for the AKP -- if it wants to proceed with its democratic reform program -- is to amend the constitution immediately. The AKP is developing a package of amendments to present to the parliament. The most important two amendments would be to Article 145, a renewed effort to assert civilian court jurisdiction over the military; and to Article 69, to make it impossible to close political parties without parliamentary approval. He worried the AKP's attempts to expedite the referendum process and other reforms would also be overturned by the Constitutional Court. He also fears the opening of another closure case against the AKP. Iyimaya solicited public USG support for the AKP's democratization projects.

¶8. (C) COMMENT. The long-running and increasingly muddy rugby match between the military and its secularist allies on one side, and the Islamist civilian government on the other,

is straining the court system and other national institutions, while distracting the attention of the country's political and military leadership, and contributing to the unease and polarization of the Turkish population. The court's decision undermines one of the strongest concrete steps the government had taken in 2009 to improve its human rights record, align itself with EU standards and hold military officials accountable for civilian crimes.
Jeffrey

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